IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	White	**Conf. No.:**	4391
Serial No.:	10/688,006	**Art Unit:**	3625
Filing Date:	10/17/2003	**Examiner:**	Levine, Adam L.
Title:	METHOD, SYSTEM AND PROGRAM PRODUCT FOR MANAGING ITEMS AVAILABLE FOR ELECTRONIC PURCHASE	**Docket No.:**	END920030046US1 (IBME-0087)

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Commissioner for Patents
P.O. Box 1450
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant respectfully requests a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicant submits that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of obviousness based on an error in facts. Claims 1-22 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1-22 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Spiegel (U.S. Patent No. 6,466,918), hereafter "Spiegel." Applicant submits that this rejection is clearly not proper and without basis because at least one claim limitation is not met by the combined features of the references cited by the Office. As argued in the February 26, 2008 After Final Amendment, Spiegel fails to teach each and every element of independent claim 1. In particular, Spiegel fails to teach that each of the items in the hierarchical structure is located using a database search query for each level of the

hierarchical structure by dynamically generating a page based on the result of the query, wherein the query returns a set of records containing the items based on a specified attribute of the items. February 26, 2008 Amendment, page 7, final paragraph through page 8, continued paragraph. In contrast, the passage of Spiegel cited by the Office teaches statically stored browse trees for locating items that may require the user to navigate downward through multiple levels of the tree to find a desired category. Col. 1, lines 25-59. To this extent, any information provided to the Spiegel user is not dynamically generated, but rather is simply retrieved from static storage based on a link by link traversal of its tree by a user.

Furthermore, Spiegel does not disclose the use of a database search query based on a specified attribute of the items to dynamically generate a page. Rather, in Spiegel "[t]he featured books and categories are displayed as respective hyperlinks that provide *a direct path* to the corresponding books and categories." Col. 7, lines 17-19, emphasis added. As such, the hyperlink in Spiegel, while possibly providing an address in which information may be located, is not a generated database query, is not based on an attribute of an item described in the information, and is not used to dynamically generate a web page. Thus, the static pages returned using the hyperlinks of Spiegel do not teach the dynamic generation of web pages via an attribute based database query of the claimed invention.

As further argued in the February 26, 2008 Amendment, Spiegel also fails to teach automatically generating the query for each level of the hierarchical structure. See February 26, 2008 Amendment, page 8, first full paragraph through page 9, continuation paragraph. Rather, even if Spiegel does use queries, as asserted by the Office, these queries are not disclosed as being dynamically generated. Instead, Spiegel teaches that its hyperlink provides a direct link to the information, and is silent regarding any generation occurring upon selection of the hyperlink.

In contrast, the only action that the passage of Spiegel cited by the Office indicates is done automatically is the elevation of the direct path hyperlinks that correspond to a particular static page within the hierarchy. To this extent, it is the identification of nodes that is automatic, and not the generation of queries for traversing the hierarchy.

Accordingly, the Office has failed to state a prima facie case of anticipation and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With respect to the rejections of independent claims 1, 8, 14 and 19, Applicant notes that each claim includes a feature similar in scope to the features discussed herein with respect to claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 1. To this extent, Applicant herein incorporates the arguments presented above with respect to claim 1, and respectfully requests withdrawal of the rejections of these claims for the above-stated reasons.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicant respectfully submits that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

Date: May 5, 2008   _____/Hunter E. Webb/_____

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